

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona )  
corporation, )  
                               )  
Plaintiff/Counterdefendant, )  
                               )  
                               vs.                 ) NO. 2:06-CV-02141-DGC  
                               )  
MIDWEST INDUSTRIAL SUPPLY, )  
INC., an Ohio corporation )  
authorized to do business )  
in Arizona, )  
                               )  
Defendant/Counterclaimant. )  
                               )

---

Phoenix, Arizona

April 10, 2008

9:00 a.m.

C O N F I D E N T I A L  
DEPOSITION OF CHAD FALKENBERG  
SOILWORKS, LLC 30(b)(6)  
(VOLUME II, Pages 230 - 356)

LEA, SHERMAN & HABESKI  
Registered Professional Reporters  
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Certified Reporter  
Certificate No. 50320

EXHIBIT

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## I N D E X

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BY MR. SKERIOTIS .....

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1 DEPOSITION OF CHAD FALKENBERG,  
2 taken at 9:00 a.m., on April 10, 2008, at the law  
3 offices of Jones, Skelton & Hochuli, 2901 North Central  
4 Avenue, Suite 800, Phoenix, Arizona, before LINDA  
5 BLACKMON, RPR/RMR, a Certified Reporter in the State of  
6 Arizona.

7

## 8 APPEARANCES:

9 For the Plaintiff/Counterdefendant:

10 Kutak Rock, LLP  
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Scottsdale, Arizona 85253-2742

12 For the Defendant/Counterclaimant:

13 Brouse McDowell  
BY JOHN M. SKERIOTIS, ESQ.  
14 388 South Main Street, Suite 500  
Akron, Ohio 44311-4407  
330-535-5711

15

16 Also Present:

17 Robert Vitale  
18  
19  
20  
21  
22  
23  
24  
25

1                           CHAD FALKENBERG,  
2        called as a witness herein, having been previously  
3        sworn, was examined and testified as follows:  
4

5                           EXAMINATION (Continued)

6        BY MR. SKERIOTIS:

7        Q.     Mr. Falkenberg, today is day two continuing  
8        the 30(b)(6) deposition. I will let you know that you  
9        are still under oath from yesterday; do you understand  
10      that?

11      A.     I understand that.

12      Q.     And we will pick up and continue on with the  
13      deposition. I believe we spoke yesterday about  
14      Durasoil and at times it can be a blend, correct?

15      A.     Correct.

16      Q.     And we also spoke about that sometimes you  
17      will do the blending and sometimes the manufacturers  
18      will do the blending, correct?

19      A.     No.

20      Q.     So we only stated that you do the  
21      blending?

22      A.     We are the ones that would be doing the  
23      blending.

24      Q.     And I think we established that sometimes you  
25      blend and sometimes you don't, correct?

1       **A.**     That is correct.

2       **Q.**     Do you have any knowledge of how much  
3     blending, how often that blending occurs?

4       **A.**     No.

5       **Q.**     But if my understanding is correct, you take a  
6     look at the specification or requirements that are  
7     called for and then determine if a blending needs to  
8     take place; is that accurate?

9       **A.**     It depends on our client's needs and their soil  
10    types and based on that we would determine what is most  
11    appropriate.

12      **Q.**     With respect to the bids that we took a look  
13    at in Alaska yesterday, do you recall those?

14      **A.**     Yes.

15      **Q.**     Because I can bring back the exhibits.

16      **A.**     If we need to.

17      **Q.**     But you recall looking at those yesterday?

18      **A.**     Yes.

19      **Q.**     Did you do any blending for those jobs in  
20    Alaska for Polar Supply that you recall?

21      **A.**     I would have to check our records.

22      **Q.**     So it could be that you did do some blending  
23    for that?

24      **A.**     It's very possible.

25      **Q.**     Do you recall if you blended anything for the

1 Kokhanok Airport in particular?

2 A. I do not recall specifically.

3 Q. How do you keep track of the blends and what  
4 you ship?

5 A. We normally have batch records of what has  
6 gone out and that would normally indicate what went  
7 into that.

8 Q. So is that primarily how you track it, by the  
9 batch number or the batch report? Is that a good way  
10 to say it?

11 A. I think that's a good way to say how we track  
12 things.

13 Q. So you would go back, look inside some of your  
14 documentation and take a look at the batch report, say  
15 for example Kokhanok Airport, you'd pull that batch  
16 report and it would tell you specifically what Durasoil  
17 product and blend was sent there; is that correct? Or  
18 sent to Polar Supply; would that be a fair statement?

19 A. I think we could track it by the batch number  
20 to find out what was delivered to who.

21 Q. What would be on this batch number?

22 A. Just a number and it would reference what  
23 materials are included in that.

24 Q. You mean ingredients or just materials?

25 A. For example, if we had a blend of materials we

1 would know from our raw materials that came in which  
2 batches went into that, whether it was one batch or  
3 whether it was two batches, we would know what we were  
4 blending or if we weren't blending at all and it was  
5 just a single raw material.

6 Q. And you could tell all of that information  
7 just from that batch sheet or batch number, correct?

8 A. It correlates to what -- yes, we can track it.

9 Q. In other words, if I were to ask you just for  
10 the batch, what do I call it, batch report or batch  
11 number?

12 A. Batch number.

13 Q. The batch number, what would be on that?

14 Would I be able to tell what you did or do I need some  
15 other sheet, then, to supplement that?

16 A. I would think you need something else to  
17 supplement that.

18 Q. And you have whatever it is that supplements  
19 that?

20 A. Yeah, it's my understanding that that is in  
21 our bookkeeping system for tracking where we list the  
22 batches, and then you would cross-reference that with  
23 when those materials came in they were assigned  
24 batches.

25 Q. So again just to clear up my understanding, I

1 thought you had said that some blending occurs at the  
2 manufacturer, chemical manufacturer?

3       **A.**     I don't believe I said that.

4       **Q.**     So I am wrong on that. I just want to make  
5 sure that the testimony is you do the blending and the  
6 manufacturer does not do the blending, if any blending  
7 occurs, correct?

8       **A.**     I think that's a good general statement.

9       **Q.**     Again, you don't know how much, you can't give  
10 me an approximate percentage of how much blending  
11 occurs, how often you blend?

12      **A.**     Not without looking at our data.

13      **Q.**     And you would do the blending, is that  
14 accurate, you personally?

15      **A.**     Not necessarily.

16      **Q.**     You would direct someone, though, to do the  
17 blending?

18      **A.**     More than likely.

19      **Q.**     But as you sit here today you don't know if  
20 half the jobs you do for Durasoil are blended and half  
21 are not? You don't have any knowledge without looking?

22      **A.**     I really don't want to guess on it. I think  
23 it would be best if we look at the numbers.

24      **Q.**     Have you ever been to Alaska?

25      **A.**     Yeah.

1       **Q.**     It says Product Description and it says "blend  
2     of isoalkanes that forms a reworkable binder in soil."  
3     And then the next column has Vendor Information. Do  
4     you see the second one is Durasoil?

5       **A.**     I see it.

6       **Q.**     With your name?

7       **A.**     I see it.

8       **Q.**     And I believe that's your 1-800 number and  
9     your E-mail; is that correct?

10      **A.**     Yes, it is.

11      **Q.**     Is Durasoil a blend of isoalkanes?

12      **A.**     What are "isoalkanes"?

13      **Q.**     My understanding of an isoalkane is you either  
14     have it or you don't. So if you don't know what it is,  
15     just say you don't know. As far as you know, you don't  
16     know?

17      **A.**     I can't be sure.

18      **Q.**     So you don't know if you have an isoalkane or  
19     not?

20      **A.**     Again, I am not a chemist and I am led to  
21     believe that isoalkanes covers a very large spectrum of  
22     chemistry and it needs to be much more well defined and  
23     narrowed down so it doesn't cover the sky.

24      **Q.**     So is it fair to say as you sit here today you  
25     don't know without a particular definition of what an

1 isoalkane is whether or not Durasoil has an isoalkane  
2 or not?

3       **A.**     I am not sure.

4       **Q.**     Is Durasoil a blend of isoalkanes?

5       **A.**     I would have to give you the same answer.

6       **Q.**     Does Durasoil form a reworkable binder in  
7 soil?

8       **A.**     The product is reworkable.

9       **Q.**     Does it form a reworkable binder in the soil?

10              **MR. DOSEK:** Object to the form.

11       **A.**     I don't know what you mean by "reworkable  
12 binder."

13       **Q.**     BY MR. SKERIOTIS: Well, what I am trying to  
14 get at is is this statement here on Page 4 a true  
15 statement with respect to Durasoil?

16              **MR. DOSEK:** Form and foundation.

17       **A.**     Let me be clear, I did not write this.

18       **Q.**     BY MR. SKERIOTIS: I am not asking you if you  
19 wrote it. I understand you didn't write it. I am  
20 asking you, though, if the statement is correct?

21              **MR. DOSEK:** Same objection.

22       **A.**     I don't know how they are defining the terms.

23       **Q.**     BY MR. SKERIOTIS: Did you ever tell either  
24 Mr. Rushing or Mr. Tingle or anyone else associated  
25 with the U.S. Army Engineer Research and Development

1 Center that Durasoil is a blend of isoalkanes?

2 **A.** Not to my knowledge.

3 **Q.** Did you tell anyone, same individuals, the  
4 same entity, that Durasoil is a reworkable binder?

5 **A.** I can't say for sure.

6 **Q.** So you may have?

7 **A.** I may have.

8 (Deposition Exhibit No. 41 was marked.)

9 **Q.** BY MR. SKERIOTIS: Mr. Falkenberg, you have  
10 just been handed what has been marked as Exhibit 41; do  
11 you recognize that document?

12 **A.** This looks more familiar.

13 **Q.** What is it?

14 **A.** I could be wrong but I think it's almost  
15 identical to the last one you just provided me but for  
16 a different division of the Military.

17 **Q.** What division for the Military is this one  
18 for?

19 **A.** I am not sure.

20 **Q.** Is this what it says it is, a dust control  
21 field handbook?

22 **MR. DOSEK:** Object to the form,  
23 foundation.

24 **A.** I don't know, I didn't write it.

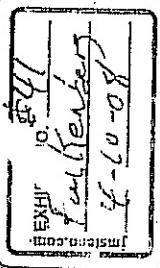
25 **Q.** BY MR. SKERIOTIS: Well, you have said you

# Dust Control Field Handbook

## Standard Practices for Mitigating Dust on Helipads, Lines of Communication, Airfields, and Base Camps

U.S. Army Corps  
of Engineers @  
Engineer Research and  
Development Center

ERDC/CG-10-07  
October 2016  
U.S. Army Engineer Research and Development Center



## Dust Control Field Handbook

Standard Practices for Mitigating Dust  
on Helipads, Lines of Communication,  
Airfields, and Base Camps

John F. Rushing and Jeb S. Tingle

*Geotechnical and Structures Laboratory  
U.S. Army Engineer Research and Development Center  
3909 Halls Ferry Road  
Vicksburg, MS 39180-6199*

Final report

Approved for public release; distribution is unlimited

Prepared for      U.S. Marine Corps Systems Command  
                         Quantico, VA 22134

**ABSTRACT:** The U.S. Army Engineer Research and Development Center has evaluated potential chemical dust palliatives for mitigating fugitive dust in military operations. The products were compared in laboratory testing and several field trials. The results of these efforts are compiled in this document to provide assistance for selecting and applying chemical dust palliatives for use on helipads, roads, airfields, and base camps. This document summarizes recommendations and conclusions derived from individual research projects. The information is intended to serve as a guide for acceptable dust mitigation. Variations of the procedures documented may be necessary to meet specific requirements.

**DISCLAIMER:** The contents of this report are not to be used for advertising, publication, or promotional purposes. Citation of trade names does not constitute an official endorsement or approval of the use of such commercial products. All product names and trademarks cited are the property of their respective owners. The findings of this report are not to be construed as an official Department of the Army position unless so designated by other authorized documents.

**DESTROY THIS REPORT WHEN NO LONGER NEEDED. DO NOT RETURN IT TO THE ORIGINATOR.**

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## PREFACE

This handbook was developed as part of a dust control program funded by the U.S. Marine Corps Systems Command, Quantico, VA. The information presented herein is for use in selecting, procuring, and applying dust palliatives for helipads, lines of communication, airfields, and base camps. Recommendations are based upon field testing conducted at Yuma, AZ, Douglas, AZ, and Fort Leonard Wood, MO, during the period 2003 to 2005.

The report was prepared by John F. Rushing and Jeb S. Tingle of the Airfields and Pavements Branch (APB) of the U.S. Army Engineer Research and Development Center (ERDC), Vicksburg, MS.

Work was conducted under the general supervision of Don R. Alexander, Chief, APB; Dr. Albert J. Bush III, Chief, Engineering Systems and Materials Division; Dr. William P. Grogan, Deputy Director, Geotechnical and Structures Laboratory (GSL); and Dr. David W. Pittman, Director, GSL.

COL Richard B. Jenkins was Commander and Executive Director of ERDC. Dr. James R. Houston was Director.

# PROCEDURE FOR USING DUST CONTROL FIELD HANDBOOK

- (1) Use Table 1 (at tab *Recommended Applications*) to select recommended product category for military applications.
- (2) Review Detailed Dust Palliative Descriptions (tab *Dust Palliatives*).
- (3) Select product from recommended product category (Table 2, tab *Vendors*).
- (4) Review recommended product application equipment (Table 3 at tab *Equipment* and tabs *Easy Lawn® Hydroseeder* and *Finn® Hydroseeder*).
- (5) Review product application guidance (tabs *Application Techniques* and *Heliports, Roads, and Base Camps*).

## Recommended Applications

**Table 1**  
**Recommended Product Applications**

Application	Primary Solution				Secondary Solution(s)			
	Product Category	Application Rate	Dilution Ratio	Application Type	Product Category	Application Rate	Dilution Ratio	Application Type
Airfields	Synthetic fluid	0.4 gsy	n/a	Topical	Polymer emulsion	1.2 gsy	3:1	Admix"
	Polymer emulsion	0.8 gsy	3:1	Admix	Synthetic fluid	0.6 gsy	n/a	Topical
Lines of Communication	Synthetic fluid	0.4 gsy	n/a	Topical	Chloride salt*	0.8 gsy	n/a	Topical
					Polymer emulsion	1.2 gsy	3:1	Topical
Helipads	Synthetic fluid	0.4 gsy	n/a	Topical	Powdered polymer	1.2 gsy	1.3 lb/gal	Topical
					Polymer emulsion	0.6 gsy	3:1	Topical
Base Camps	Synthetic fluid	0.4 gsy	n/a	Topical	Powdered polymer	0.6 gsy	1.3 lb/gal	Topical
					Polysaccharide	0.6 gsy	3:1	Topical

\* Should not be used in excessively dry or excessively wet conditions.

" Depth of mixing should be minimum 4 in.

## Synthetic Fluids

Synthetic organic fluids are applied to a soil "as received." These fluids are not miscible with water and therefore are unable to be diluted. They consist of isoalkanes that do not dry or cure with time. The reworkable binder is ready for immediate use upon application and maintains effectiveness over extended periods of time.

Synthetic Fluid					
Product Description	Vendor Information		Effective Uses	Limitations	Shipping
Blend of isoalkanes that forms a reworkable binder in soil. Will not mix with water. Effective for long-term use.	<i>Envirokeen</i> Midwest Industrial Supply Todd Hawkins 1-800-321-0699 <a href="mailto:todd@midwestind.com">todd@midwestind.com</a>	<i>Durasoil</i> Soilworks, Inc. Chad Falkenberg 1-800-545-5420 <a href="mailto:chad@soilworks.com">chad@soilworks.com</a>	Helipads Lines of communication Base camps Airfields	More expensive than most products	275-gal containers (2,000 lb)

## Vendors

**Table 2**  
**Product and Vendor Information**

Product Category	Dust Palliative	Vendor	POC	Telephone	Email
Chloride salt	Dust Fighter	Midwest Industrial Supply	Todd Hawkins	1-800-321-0699	todd@midwestind.com
Lignosulfonate	Road Oyl	Midwest Industrial Supply	Todd Hawkins	1-800-321-0699	todd@midwestind.com
	Dusttac	Dust Pro	Lou Snow	(602) 251-3878	nodus@dustpro.com
Petroleum product	CSS Asphalt Emulsion	Western Emulsions	Sales Representative	(520) 662-7203	western@westernemulsions.com
Polyacrylamide	PolyPlus	Polymers Plus	Jean Whitish	(608) 836-0805	jwhitish@polymersplusllc.com
Polymer emulsion	Envirotac II	Environmental Products and Applications	John Vermillion	(760) 779-1814	dustcontrolman@adl.com
	Soiltac	Soilworks	Chad Falkenberg	1-800-545-5420	chad@soilworks.com
Soil-segment	Midwest Industrial Supply	Midwest Industrial Supply	Todd Hawkins	1-800-321-0699	todd@midwestind.com
	DC 100	Environmental and Fire Technology	Cal Blystra	(616) 784-0770	c.blystra@worldnet.att.net
	Liquid Dust Control	Enviroseal Corporation	Andy Stevens	(772) 335-8225	andy@enviroseal.com
Polysaccharide	Surtac	Soilworks	Chad Falkenberg	1-800-545-5420	chad@soilworks.com
Powdered polymer	Powdered Surtac	Soilworks	Chad Falkenberg	1-800-545-5420	chad@soilworks.com
Synthetic fluid	Durasoil	Soilworks	Chad Falkenberg	1-800-545-5420	chad@soilworks.com
	Envirokleen	Midwest Industrial Supply	Todd Hawkins	1-800-321-0699	todd@midwestind.com
	EK-35	Midwest Industrial Supply	Todd Hawkins	1-800-321-0699	todd@midwestind.com

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9 *Attorneys for Plaintiff*  
10 *SOILWORKS, LLC, an Arizona corporation*

11  
12  
13 UNITED STATES DISTRICT COURT  
14 IN AND FOR THE DISTRICT OF ARIZONA

15 SOILWORKS, LLC, an Arizona  
16 corporation,

17 Plaintiff / Counterdefendant /  
18 Counterclaimant,

19 v.  
20 MIDWEST INDUSTRIAL SUPPLY, INC.,  
21 an Ohio corporation authorized to do  
22 business in Arizona,

23 Defendant / Counterclaimant /  
24 Counterdefendant.

25 NO.: 2:06-CV-2141-DGC

26 SOILWORKS, LLC'S RESPONSES TO  
27 MIDWEST INDUSTRIAL SUPPLY,  
28 INC.'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS  
AND THINGS

EXHIBIT 8 DATE 4-8-08

JENNIFER HANSEN, RPR

CERTIFIED REPORTER #50165

DEPO OF D. Falkenberg

19 Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Plaintiff,  
20 Soilworks, LLC ("Soilworks") hereby responds to Defendant Midwest Industrial Supply,  
21 Inc.'s ("Midwest") First Request for Production of Documents and Things, dated May 22,  
22 2007.

23 GENERAL STATEMENTS

24 1. Soilworks incorporates by reference each and every general objection set forth  
25 below into each and every specific response. From time to time a specific response may  
26 repeat a general objection for emphasis or some other reason. The failure to include any  
27 general objection in any specific response shall not be interpreted as a waiver of any general  
28

objection to that response.

2. Soilworks' responses to Defendant's Interrogatories and Document Requests are made to the best of Soilworks' present knowledge, information and belief. Soilworks reserves the right to supplement and amend these responses should future investigation indicate that such supplementation or amendment is necessary. The following responses and objections are given without prejudice to Soilworks' right to revise its responses based upon any subsequent investigation.

3. By responding to Midwest's Interrogatories and Document Requests, Soilworks does not waive any objection that may be applicable to: (a) the use, for any purpose, by Midwest of any information or documents given in this response to Midwest's Interrogatories and Document Requests; or (b) the admissibility, relevancy or materiality of any of the information or documents at issue in this case.

## GENERAL OBJECTIONS

1. Soilworks objects to the noticed date for the production. Due to the length and number of discovery requests and the volume of requested materials, Soilworks cannot possibly produce everything within 30 days. Soilworks will produce responsive materials on a rolling basis.

2. Soilworks objects to each and every Interrogatory and Document Request to the extent that it is inconsistent or seeks to impose duties or obligations on Soilworks beyond those imposed by the Federal Rules of Civil Procedure, the Local Rules for this District, or the Individual Rules of the Judge hearing this matter.

3. Soilworks objects to each and every Interrogatory and Document Request insofar it is vague, ambiguous, indefinite, overly broad, unduly burdensome, duplicative, cumulative, unintelligible or otherwise unclear as to the precise information sought. Soilworks objects on this basis particularly when the Interrogatory or Document Request is unduly burdensome in view of the cost necessary to investigate weighed against Midwest's need for the information.

4. Soilworks objects to each and every Interrogatory and Document Request to

1       the extent that it seeks information that is neither relevant to any claim or defense in this  
2 action nor reasonably calculated to lead to the discovery of admissible evidence.

3       5.     Soilworks objects to each and every Interrogatory and Document Request as  
4 overly broad and unduly burdensome to the extent that it seeks information about Soilworks  
5 products that are not accused of infringement. Soilworks will only provide materials and  
6 information on its products and services that are actually accused of infringing the two  
7 Midwest Patents identified in the Counterclaims.

8       6.     Soilworks objects to each and every Interrogatory and Document Request as  
9 overbroad in geographic scope to the extent that it seeks discovery on activities outside the  
10 United States. Unless otherwise stated, Soilworks will interpret each Interrogatory and  
11 Document Request to be limited to activities in the United States.

12       7.     Soilworks objects to each and every Interrogatory and Document Request to  
13 the extent that it seeks information or documents protected by the attorney-client privilege,  
14 work product doctrine, joint-defense privilege, common-interest privilege, or any other  
15 applicable law, privilege, protection, or doctrine (collectively "privileged information"). The  
16 production of any privileged information or document by Soilworks (beyond production of  
17 opinions relied upon) is unintentional, and Soilworks does not intend to waive any applicable  
18 objection or privilege as a result of such production. The scope of any waiver of privilege  
19 related to production of opinions of counsel shall be as narrow as permitted by law.

20       8.     Soilworks objects to each and every Interrogatory and Document Request to  
21 the extent it requires Soilworks to search for and reveal privileged information from its and  
22 its attorneys' litigation files pertaining to this lawsuit. Soilworks will not schedule on its  
23 privilege log any attorney-client privileged materials or materials protected by the attorney  
24 work product doctrine created during the course of any ongoing Soilworks/Midwest  
25 litigation.

26       9.     Soilworks objects to each and every Interrogatory and Document Request as  
27 unduly burdensome and oppressive to the extent that it purports to require Soilworks to  
28 search its facilities and inquire of Soilworks' employees other than those facilities and

1 employees that would reasonably be expected to have responsive information. Soilworks'  
2 responses are based upon (1) a reasonable search, given the time allotted to Soilworks to  
3 respond to the interrogatories, of facilities and files that could reasonably be expected to  
4 contain responsive information, and (2) inquiries of Soilworks employees and/or  
5 representatives who could reasonably be expected to possess responsive information.

6       10. Soilworks objects to each and every Interrogatory and Document Request to  
7 the extent that it seeks information or documents already in the possession of Midwest or in  
8 the public domain and as readily available to Midwest as they are to Soilworks.  
9 Accordingly, information or documents that are otherwise responsive to these Interrogatories  
10 and Document Requests, but that are already in the possession of Midwest, or are equally  
11 available or more available to Midwest, will not be produced in response to these  
12 Interrogatories and Document Requests.

13       11. Soilworks objects to each and every Interrogatory and Document Request to  
14 the extent it calls for information or documents not within the possession, custody or control  
15 of Soilworks. The responses given herein are based upon information and documents within  
16 Soilworks' possession, custody or control.

17       12. Soilworks objects to each and every Interrogatory and Document Request as  
18 overbroad and unduly burdensome to the extent that it is unlimited in temporal scope or  
19 otherwise not limited to a time frame relevant to this litigation and the patent-in-suit.

20       13. Soilworks objects to each and every Interrogatory and Document Request to  
21 the extent that it calls for information or documents which are confidential or proprietary to,  
22 or the trade secrets of, a third party. Soilworks will not produce such documents until it has  
23 notified the relevant third parties of Midwest's requests and, to the extent necessary,  
24 obtained their consent to such production.

25       14. Soilworks objects to each and every Interrogatory and Document Request to  
26 the extent it seeks confidential, trade secret, or proprietary business, technical, marketing, or  
27 financial information. Soilworks will not provide such information until a suitable protective  
28 order has been agreed upon by the parties and entered by the Court.

1        15. Soilworks objects to each and every Interrogatory and Document Request to  
2 the extent that it seeks information or documents regarding Soilworks' proprietary  
3 development activities for products not yet manufactured or available to the public, because  
4 the relevance, if any, of such highly confidential information is substantially outweighed by  
5 the prejudice that Soilworks would suffer if the information were disclosed or made  
6 available to Soilworks' competitors.

7        16. Soilworks objects to each and every Interrogatory and Document Request to  
8 the extent that it seeks discovery that is the province of expert testimony, prior to the period  
9 that expert disclosures and discovery are scheduled to occur.

10        17. Soilworks objects that the Interrogatories and Document Requests are  
11 premature. This case is still in its early stages. Soilworks is still investigating its claims, and  
12 needs critical discovery from Midwest. Midwest has yet to identify its claim construction  
13 position, or state in detail the basis for its infringement contentions.

14        18. The information set forth herein is provided without waiving (1) the right to  
15 object to the use of such information for any purpose, if a basis for objecting exists; (2) the  
16 right to object to any request involving or relating to the subject matter of information  
17 contained in this disclosure statement; or (3) the right to revise, correct, supplement or clarify  
18 any of the information set forth below.

## OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

20       1.     Soilworks objects to the definitions of Midwest as overly broad, unduly  
21 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.  
22 The terms are defined so broadly as to render many of the Interrogatories and Document  
23 Requests incomprehensible.

24       2. Soilworks objects to the definitions of "document" and "documents" as  
25 overbroad, vague, and ambiguous. Soilworks will construe both terms consistently with the  
26 Federal and Local Rules.

27       3.     Soilworks objects to Midwest's instructions as overly broad. Except as set  
28 forth below, Soilworks will not separately, specifically identify the document.

1 communication or item for which it claims privilege. Rather, when necessary, Soilworks  
2 will identify its privileged documents in the form of a privilege log. However, Soilworks  
3 will not disclose, produce or include on a privilege log any documents or things created or  
4 dated after the filing of the Complaint in this action.

5 SPECIFIC RESPONSES

6 1. All documents, things, and electronically stored information that Plaintiff  
7 reviewed or relied upon in answering Defendant's First Set of Interrogatories to Plaintiff  
8 Soilworks LLC.

9 **RESPONSE:** Objection. This interrogatory is premature. This case is still in its  
10 early stages. Soilworks is still investigating its claims, and needs critical discovery from  
11 Midwest. Midwest has yet to identify its claim construction position, or state in detail  
12 the basis for its infringement contentions. Furthermore, some documents reviewed or  
13 relied upon to answer Defendant's interrogatories may be subject to the attorney client  
14 and/or work product privilege. Without waiving the foregoing objections, once the  
15 Court has entered a Protective Order which is mutually agreeable to all parties,  
16 Soilworks will make responsive documents available. Further, without waiving the  
17 foregoing objections, on the basis of the allegations made to date, Soilworks produces  
18 herewith its preliminary claims chart. It is important to note that the claims chart is  
19 preliminary only and was produced in the absence of Midwest's claim construction /  
20 interpretation position and claims chart regarding its patent(s).

21 2. All documents, things and electronically stored information identified by  
22 Plaintiff in §B of its Rule 26 disclosures, (entitled "Documents, Data Compilations and  
23 Tangible Things,"). Nos. 1-7.

24 **RESPONSE:** Objection. This interrogatory is premature. This case is still in its  
25 early stages. Soilworks is still investigating its claims, and needs critical discovery from  
26 Midwest. Midwest has yet to identify its claim construction position, or state in detail  
27 the basis for its infringement contentions. Furthermore, this request is overly intrusive,  
28 broad and unduly burdensome. Without waiving the foregoing objections, once the

1  
2 KUTAK ROCK LLP  
3  
4

5 By /s/  
6

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8601 North Scottsdale road  
Scottsdale, AZ 85253-2742

7 *Attorneys for Plaintiff*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 23rd, 2007, the foregoing Soilworks, LLC's Responses to Midwest Industrial Supply, Inc.'s First Request for Production of Documents and Things was served electronically upon the following:

JOHN M. SKERIOTIS #0069263 (OH)  
JILL A. GRINHAM #075560 (OH)  
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Jill Anne Grinham [jgrinham@brouse.com](mailto:jgrinham@brouse.com)  
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*Attorneys for Defendant Midwest Industrial Supply, Inc.*

/s/  
Amy S. Fletcher

Patent 7,081,270	Soilworks' Durasoil®
1. A method for providing at least one of stabilization and dust control to a particulate surface soil, the method comprising: applying to and allowing to penetrate the surface soil a composition consisting essentially of: (a) a binder consisting essentially of a carboxylic acid, an ester, or a thermoplastic polyolefin; and, (b) a synthetic isoalkane.	Durasoil does not provide stabilization through the use of a binder (like an adhesive). Durasoil is a compaction agent and helps achieve higher soil/aggregate densities and therefore a more stabilized soil. Durasoil provides dust control. Durasoil does not have any carboxylic acid. Durasoil contains esters. Durasoil does not contain any thermoplastic polyolefins (this term needs better defining). Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil).
2. The method of claim 1, where the composition is devoid of electrolytes.	Unknown.
3. The method of claim 1, where said composition is applied neat to the surface soil.	Durasoil is applied neat to the surface soil.
4. The method of claim 1, where the binder is a thermoplastic polyolefin.	Durasoil does not contain thermoplastic polyolefins (this term needs better defining).
5. The method of claim 4, where the composition comprises from 2 to 90% by weight of the thermoplastic polyolefin.	Durasoil does not contain thermoplastic polyolefins (this term needs better defining).
6. The method of claim 1, where the binder is a carboxylic acid.	Durasoil does not contain carboxylic acids.
7. The method of claim 6, where the carboxylic acid is a fatty acid.	Durasoil does not contain carboxylic acids or fatty acids.
8. The method of claim 6, where the composition comprises from 5 to 70% by weight of the carboxylic acid.	Durasoil does not contain carboxylic acids.
9. A method for providing at least one of stabilization and dust control to a particulate surface soil, the method comprising the step of: applying to and allowing to penetrate the surface soil a composition consisting essentially of: (a) a binder consisting essentially of a carboxylic acid, an ester, or a thermoplastic polyolefin; (b) a synthetic isoalkane; and, (c) an emulsifier.	Durasoil does not provide stabilization through the use of a binder (like an adhesive). Durasoil is a compaction agent and helps achieve higher soil/aggregate densities and therefore a more stabilized soil. Durasoil provides dust control. Durasoil does not contain any carboxylic acids. Durasoil contains esters. Durasoil does not contain thermoplastic polyolefins (this term needs better defining). Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil). Durasoil does not contain any emulsifiers.
10. A process for at least one of reducing erosion and controlling dust in surface soil, the process comprising: (a) applying to said surface soil a composition comprising two organic materials and allowing the composition to penetrate and weight discrete portions of the surface soil, where the composition consists essentially of (a) a binder consisting essentially of a carboxylic acid, an ester, or a thermoplastic polyolefin and (b) a plasticizer consisting essentially of a synthetic isoalkane; and allowing at least one material in the composition to form a binder in which portions of the surface soil are associated, so as to provide a treated surface soil.	Durasoil does not reduce erosion. Durasoil provides dust control in surface soil. Durasoil is applied to the surface soil. Durasoil is not comprised of two organic materials. Durasoil's composition will penetrate and weight discrete portions of the surface soil. Durasoil does not have any carboxylic acid. Durasoil contains esters. Durasoil does not contain any thermoplastic polyolefins (this term needs better defining). Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil).
11. The process of claim 10, where said surface soil comprises at least one of dirt, slag, sand, gravel, mineral, and aggregate.	Durasoil can be used with any dirt, slag, sand, gravel, mineral and aggregate.
12. The process of claim 10, where said weighting is achieved by at least one of adsorption and absorption of said blend to said discrete portions of said surface soil.	Durasoil weighting is achieved by adsorption and/or absorption of the surface soil. Durasoil is not a blend.
13. The process of claim 10, where said surface soil exhibits at least a 100% increase in stiffness and Young's modulus after being treated.	Unknown
14. The process of claim 10, where the composition comprises 2 to 90% by weight of the polyolefin.	Durasoil does not contain any thermoplastic polyolefins (this term needs better defining). Durasoil is not a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil).
15. A process for at least one of reducing erosion and controlling dust in surface soil, the process comprising: (a) applying to said surface soil a composition and allowing the composition to penetrate and weight discrete portions of the surface soil, where the composition consists essentially of (a) a binder consisting essentially of a carboxylic acid, an ester, or a thermoplastic polyolefin (b) a plasticizer consisting essentially of a synthetic isoalkane and (c) a long chain carboxylic acid or ester; and, (b) allowing at least one material in the composition to form a binder in which portions of the surface soil are associated, so as to provide a treated surface soil.	Durasoil does not reduce erosion. Durasoil provides dust control in surface soil. Durasoil is applied to the surface soil. Durasoil's composition will penetrate and weight discrete portions of the surface soil. Durasoil does not have any carboxylic acid. Durasoil contains esters. Durasoil does not contain any thermoplastic polyolefins (this term needs better defining). Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil). Durasoil's composition does not contain any binders.
16. The process of claim 15, where the composition comprises from 5 to 70% by weight of the carboxylic acid or ester.	Durasoil does not contain any carboxylic acid. Durasoil contains esters.

## Patent 7,074,266

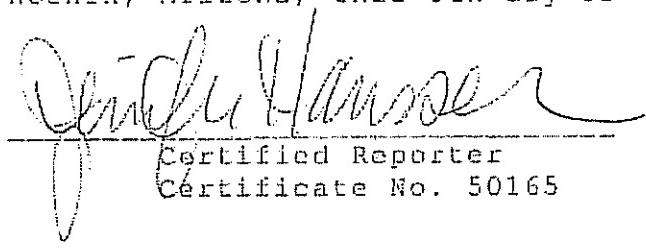
Patent 7,074,266	Soilworks' Durasoil®
1. A compound for chemical soil stabilization and dust control, the compound consisting essentially of: a binder consisting essentially of a carboxylic acid, an ester, or a thermoplastic polyolefin; and, a synthetic isoalkane.	Durasoil does not provide stabilization through the use of a binder (like an adhesive). Durasoil is a compaction agent and helps achieve higher soil/aggregate densities and therefore a more stabilized soil. Durasoil provides dust control. Durasoil does not contain any carboxylic acid. Durasoil contains esters. Durasoil does not contain any thermoplastic polyolefins (this term needs better defining). Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil).
2. The compound of claim 1, wherein the binder is a carboxylic acid.	Durasoil does not contain any binders or any carboxylic acid
3. The compound of claim 2, wherein the carboxylic acid is a fatty acid.	Durasoil does not contain any carboxylic acid or fatty acid.
4. The compound of claim 2, wherein the compound is devoid of electrolytes.	Unknown.
5. The compound of claim 2 wherein the compound comprises from 1 to 99% by weight of the carboxylic acid.	Durasoil does not contain any carboxylic acid
6. The compound of claim 2, wherein the compound further comprises an emulsifier.	Durasoil does not contain any emulsifiers.
7. The compound of claim 2, wherein the synthetic isoalkane is selected from a group comprising: synthetic or semisynthetic hydrocarbons.	Durasoil does not contain a synthetic isoalkane because it is not manufactured molecule by molecule (like a group 4 PAO base oil). The terms synthetic or semisynthetic hydrocarbons needs better defining. If synthetic is defined as molecules that are manufactured/built molecule by molecule (like a group 4 PAO base oil) rather than being broken down (like group 1,2 or 3 base oils) from larger molecules, then Durasoil is not synthetic. If semisynthetic is defined as molecules created from larger molecules, then Durasoil is semisynthetic.
8. The compound of claim 7 wherein the synthetic hydrocarbons are selected from a group produced from hydrotreating, hydrocracking, or hydroisomerization.	Durasoil is produced from hydrotreating, hydrocracking or hydroisomerization (which defines group 1,2 and 3 base oils).
9. The compound of claim 7 wherein the synthetic isoalkane is selected from chemical group comprising: isoalkanes or branched iso-paraffins.	Isoalkanes needs to be better defined (unknown). Durasoil is based on paraffin. The term branched iso-paraffins need to be better defined.
10. The compound of claim 1, wherein the binder is a thermoplastic polyolefin.	Durasoil does not contain any thermoplastic polyolefins (this term needs better defining).
11. The compound of claim 10, wherein the compound comprises from 1 to 99% by weight of the thermoplastic polyolefin.	Durasoil does not contain any thermoplastic polyolefins (this term needs better defining).
12. The compound of claim 1 wherein the isoalkane has a viscosity of at least about 19 centistokes @20.degree. C. and a flame point greater than 130.degree. C.	Isoalkanes needs to be better defined (unknown). Durasoil's viscosity is at least about 19 centistokes @20 degree C and has a flame point greater than 130 degree C.
13. The compound of claim 12 wherein the synthetic isoalkane is selected from chemical group comprising: isoalkanes or branched iso-paraffins.	Isoalkanes needs to be better defined (unknown). Durasoil is based on paraffin. The term branched iso-paraffins need to be better defined.
14. The compound of claim 1, wherein the compound further comprises an emulsifier.	Durasoil does not contain any emulsifiers.
15. The compound of claim 14, wherein the synthetic isoalkane has a flash point of 177.degree. C.	Durasoil does not have a flash point of 177 degree C (+/- 20 C)

1 STATE OF ARIZONA                )  
2                                     ) ss.  
3 COUNTY OF MARICOPA             )

4                                     BE IT KNOWN that the foregoing confidential  
5 deposition was taken before me, JENNIFER HANSEN, a  
6 Certified Reporter in the State of Arizona; that the  
7 witness before testifying was duly sworn by me to  
8 testify to the whole truth; that the questions  
9 propounded to the witness and the answers of the witness  
10 thereto were taken down by me in shorthand and  
11 thereafter reduced to print by computer-aided  
12 transcription under my direction; that the confidential  
13 deposition was submitted to the witness to read and  
14 sign; that the foregoing 180 pages are a true and  
15 correct transcript of all proceedings had upon the  
16 taking of said confidential deposition, all done to the  
17 best of my skill and ability.

18                                     I FURTHER CERTIFY that I am in no way related  
19 to any of the parties hereto nor am I in any way  
20 interested in the outcome hereof.

21                                     DATED at Phoenix, Arizona, this 9th day of  
22 April, 2008.

  
\_\_\_\_\_  
23                                     Certified Reporter  
24                                     Certificate No. 50165  
25